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Floid C. Hartman and Ruth A. Hartman v. Ora Ann Potter, Husky Oil Co. and Chevron Oil Co. : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

FLOID C. HARTMAN and RUTH A. HARTMAN, Plaintiffs-Appellants,	:	
vs.	:	No. 16004 6613
ORA ANN POTTER, HUSKY OIL COMPANY and CHEVRON OIL COMPANY, Defendants-Respondents.	:	

BRIEF OF RESPONDENTS HUSKY OIL COMPANY AND CHEVRON U.S.A. INC. (FORMERLY CHEVRON OIL COMPANY)

Appeal from the Judgment of the Third District Court
for Salt Lake County
Honorable David K. Winder, District Judge

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TABLE OF CONTENTS

Authorities

Cases

Statutes

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NATURE OF THE CASE

This is an action by the Plaintiffs-Appellants, grantees, of a 1951 conveyance, to quiet title to 25% of the oil, gas and mineral rights of certain real property and for an accounting of and judgment against the Defendants-Respondents for oil and gas royalty payments allocable to that 25% interest.

DISPOSITION IN THE LOWER COURT

The matter came before the Honorable David K. Winder, Judge of the Third Judicial District Court of Salt Lake County on the separate Motions for Summary Judgment filed by the Plaintiffs-Appellants Floid C. and Ruth A. Hartman, (hereinafter referred to as "Hartmans") and the Defendant-Respondent Ora Ann Potter, hereinafter referred to as "Potter". The lower court denied

Appellants-Hartmans' motion and granted the motion of Respondent Potter. The Court quieted in Respondent Potter title to the disputed 25% interest in oil, gas and mineral rights and rejected the claim of the Hartmans to any title or interest therein. Also, the Court ordered that the oil and gas royalties being held by the Defendant Husky Oil Company, (hereinafter referred to as "Husky"), be paid to Respondent Potter

RELIEF SOUGHT ON APPEAL

Defendants-Respondents Husky and Chevron U.S.A., Inc. seek affirmance of the decision of the lower court.

STATEMENT OF FACTS

While Respondents Husky and Chevron U.S.A., Inc. do not disagree with the "factual" statements of Appellants in their Statement of Facts, Respondents do object to the argument and conclusions inserted therein. Also, we believe that Appellants' statement is both insufficient and incomplete and does not make proper reference to the record on Appeal for this Court's benefit. Therefore, these Respondents recite the following Statement of Facts and refer to the record in the lower court by the marked page number ("R.-"):

In 1951, William M. Potter and Rose K. Potter, husband and wife, and William Potter, Jr., their son, were the owners of the center 160 acres of real property in Section 32, Township 1 South, Range 4 West, U.S.M. in Duschesne County, together with 50% of the oil, gas and mineral rights pertaining to the 160 acres. The Potters had previously owned 100% of the oil, gas

mineral rights but had conveyed 50% to a Mr. C. R. Bennett of Tulsa, Oklahoma on July 29th, 1946. (R. 173).

On June 27th, 1951, Mr. and Mrs. Potter entered into a contract to sell the 160 acres to the Plaintiffs-Appellants. (R. 51). The parties met at the First Security Bank in Roosevelt, Utah where a bank official, Mrs. J. O. Orser, prepared a contract of sale, escrow documents and a warranty deed. (R. 212-217). The bank conducted the business for Plaintiffs and the Potters and both parties were present and agreed what should be in the contract. However, Plaintiff Floid Hartman has no present recollection of the terms of the contract or the escrow agreement other than that he was to make yearly payments of principal and interest to the Potters through the bank and that the deed given was generally consistent with the contract. All copies of the contract for sale and other closing documents were either lost or destroyed. (R. 129,, 214-217). At the time of the conveyance, the Potters were approximately 70 years old. (R. 216).

Also, a warranty deed from the Potters to Hartmans was prepared by the bank, signed by Potters and placed into escrow until the purchase price was paid by Hartman. (R. 83, 217). Sometime before December 31st, 1954 the purchase price was paid and Mr. Hartman received the escrowed deed. The deed was dated June 27th, 1951 and recorded April 30th, 1955. (R. 83). The deed provided as follows:

> The SW 1/4 of the NE 1/4; the NW 1/4 of the SE 1/4; the SE 1/4 of the NW 1/4 and the NE 1/4 of the SW 1/4; of Section 32, Township 1 South, Range 4 West, U.S.M. containing 160 acres more or less; together with all improvements and appurtenances to said land belonging.

> There is reserved unto the Grantors three-fourths (3/4) of all the oil, gas and mineral rights to the above land belonging. With the right of ingress and egress thereon for the purpose of finding and producing oil, gas and minerals thereon.
>
> This deed is given subject to a prior lease of all the oil, gas and mineral rights to said land belonging. (R. 83).

Floid Hartman testified that at the time of the sale in 1951, he was fully aware if the previous conveyance by Potter to C. R. Bennett. The Bennett transaction appeared of record with the Duschesne County Recorder. Also, a title opinion given to Hartmans by the Duschesne County Abstract Company disclosed that Potters only owned a part of the oil and gas rights. (R. 227).

Sometime after 1951, Mr. and Mrs. Potter died and William Potter, Jr., succeeded to their ownership of the oil, gas and mineral rights. In 1970, the younger William Potter leased the reserved oil and gas rights to Altex Oil Company. Subsequently, William Potter, Jr. also died and the reserved oil, gas and mineral interest passed to the Respondent Ora Ann Potter. (R. 51). Also, in 1967, Appellants entered into an oil and gas lease with Respondent Chevron U.S.A., Inc. (hereinafter referred to as "Chevron"). (R. 5).

In April 1973, an oil well was completed near the property and production was commenced by Altex Oil Company and Chevron pursuant to a working agreement and division order. In October 1973, Husky succeeded to and presently retains the leasehold interests of both Altex and Chevron Oil Companies. (R. 37-41).

While Chevron made lease rental payments to Appellants, prior to 1973, Altex and its successors also paid Respondent Potter annual lease rental payments. Since production from the

well commenced in April 1973, Respondent Husky has paid oil and gas royalties to Respondent Potter on the basis of her ownership of one-half (1/2) of the oil, gas and mineral rights. (The other one/half (1/2) owned by successors of C.R. Bennett). No royalty payments have ever been made to Appellants. (R. 40-46, 76).

On May 13th, 1976 Appellants filed this action to quiet their claimed 1/4th interest in the oil, gas and mineral rights which Appellants allege was granted to them by the 1951 deed. Appellants also demanded judgment against all the Defendants for the amounts paid to Defendant Potter allocable to the disputed 1/4 interest. (R. 2). All the Respondents answered, denied Appellants claim to any oil, gas and mineral rights, and asserted that the 1951 deed reserved in the grantors the 50% interest in the oil, gas, and mineral rights owned by the grantors at the time of the conveyance. (R. 105, 109, 155-159).

Following the deposition of Appellant Floid Hartman (R. 204) and numerous interrogatories, Appellants and Respondents Potter filed separate Motions for Summary Judgment. (R. 160, 171). In a Memorandum Decision dated June 26th, 1978 the trial court granted Summary Judgment to Respondent Potter which judgment was entered on July 10th, 1978. (R. 185-186, 193-196). The lower court determined that the 1951 deed effectively reserved in the Grantors their 50% oil, gas and mineral rights owned at the time of the conveyance and conveyed no interest in the oil and gas rights to Appellants Hartman. (R. 193-195).

POINT I

THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS AND IN DENYING APPELLANTS' MOTION

This is merely a case of determining the language of a deed wherein the grantors reserved to themselves 75% of all the oil, gas and mineral rights when they only owned 50% of the same. Appellants claim their interpretation of the language requires that title to 1/4 of the oil, gas and mineral rights be quieted in Appellants because of what they assert they believed at the time. In the lower court, Appellants relied upon the theory that the court should seek out the intention of the parties to the conveyance. Appellants do not claim any fraud or mutual mistake in the deed as given nor do they seek reformation of the instrument. Appellants do not claim or argue that the grantors breached any warranty of title. Appellants merely desire the court to construe a deed so as to satisfy Appellants' interests.

Respondents submit that in construing the language of the deed that the court must consider and give effect to the entire document. When the entire language of the document is considered the only reasonable interpretation of the deed is that the grantors conveyed the surface rights to Appellants but retained all of the mineral rights which they owned.

In essence, Appellants' claim is that 1) the deed is obviously ambiguous and, therefore, the court should apply Appellants' arbitrary rules of construction to construe the deed against the grantor and in accordance with the claimed

"interpretation of the parties"; and 2) the court should determine and give effect to the "true intent" of the parties by only considering Appellants' self-serving statements and actions. The lower court properly rejected both assertions.

As to Appellants argument that a deed is always construed against the grantor, this Court has previously stated that this rule is one of last resort only and should not be applied when the court can satisfactorily and reasonably give effect to the intent of the parties. Russell v. Geyser - Marion Gold Mining Company, 18 U.2d 363, 423 P.2d 487, 490 (1967). In Russell, the court refused to arbitrarily interprete a deed against the grantor when a different result was intended in the document. In Howard v. Howard, 12 U.2d 407, 367 P.2d 193, 195 (1962) this Court also stated that a grantor's intention should be given effect if reasonably determinable. The meaning of a reservation in a deed should be arrived at by determining the intent of the grantors at the time of the conveyance. Jolly v. Wilson, 478 P.2d 886 (Okla., 1970), Whittle v. Wolff, 249 Or. 217, 437 P.2d 114 (1968). Appellants also assert that their own statements of what they believed and what they claim was discussed with the grantors, now deceased, evidence the "intention of the parties." Such testimony is inadmissible under Section 78-24-2, U.C.A. 1953, as amended. Even were it admissible, it is most self-serving and asserts no facts but only makes claims of what Appellants "believed", all unsupported by the record.

Appellants are not able to show that the intentions of

the grantors, or even of both the parties, were that the Appellants were to receive any oil, gas and mineral rights. Appellants do not in any way support their naked assertions of what both parties intended by any reference to the record before the court. The record provides no admissible evidence that the deed was ever intended to convey to Appellants any mineral rights. Appellants only claim they "believed that . . . [they] were receiving 1/4 of the mineral rights" (R. 179, 5). This is nothing more than the most blatant of self-serving statements and is entirely inconsistant with Appellant Hartman's admission that he had both actual and constructive knowledge of the mineral rights owned by Potters and that Potters had made a previous conveyance. (R. 227). Appellants certainly cannot be heard to say that the lower court should have awarded them Judgment based on the record before it. Rather, the record before this court confirms that the court properly awarded Summary Judgment to the Respondents based on the document itself and the situation of the parties at the time of the conveyance.

POINT II

THE TRIAL COURT PROPERLY RULED THAT RESPONDENT POTTER OWNS 50PERCENT OF THE GAS, OIL AND MINERAL RIGHTS

Appellants contend that there is "little question" that the deed (R. 83) from Potters to Appellants is "ambiguous". For some strange reason Appellants also seem to absurdly suggest that the deed would even be ambiguous had Potters owned all 100% of the oil, gas and mineral rights at the time of the conveyance. Since the deed is ambiguous, Appellants say, the court must look

to extrinsic evidence (e.g. Appellants self-serving statements of believe) to determine the intent of the parties.

While Respondents agree that the intent of the parties is important to construe an ambiguous document it does not necessarily follow that a court must look beyond the document to extrinsic evidence to determine the intention of the language. The court has a duty to ascertain the intent from the language of the document itself and not from what a party secretly believed or intended. In construing a deed it is necessary to give effect and meaning to each word and clause of the document. Fowler v. Tarbet, 45 Wash.2d 332, 274 P.2d 341 (1954), Kennedy v. Monroe, 165 Kan. 168, 193 P.2d 220, 224 (1948 , Mitchel v. Brown, 43 Cal.2d 217, 110 P.2d 456 (1941).

The pertinent clauses of the deed, the grant and the habendum clause, when considered and interpreted together are not inconsistent with each other or with Respondents' position.

> . . . There is reserved into the Grantors three-fourths (3/4) of all the oil, gas and mineral rights to the above land belonging . . . This deed is given subject to a prior lease of all the oil, gas and mineral rights to said land belonging.

But to interprete the reservation as contended by Appellants would be directly contrary to the habendum clause stating that the deed is given subject to the prior interest in the oil, gas and mineral rights.

Respondents submit that whether the court looks only at the language of the deed or also considers proper extrinsic evidence from the record the result is the same. The plain meaning of the document does not change. The grantors, in conveying to the Appel-

lants surface rights to the property, excluded from the conveyance and their warranty the previous grant of oil, gas and mineral rights by providing that the "deed is given subject to a prior lease". The record indicates that the conveyance of 50% of the mineral rights to Bennett in 1945 was the only "prior lease". In addition to the exclusion from the deed of the previously conveyed 50%, the grantors also reserved unto themselves 75% of all the oil, gas and mineral rights belonging to the land. While it is possible that the grantors may have mistakenly thought they still owned 75% and not 50%, the intent of the language is clear: the grantors' deed excluded the oil, gas and mineral rights previously conveyed and reserved to the grantors the remaining rights, whether it was 75 percent or less than 75 percent. Respondents position is even more clear when considering the facts that Hartman had both actual and constructive knowledge of the prior conveyance to which the deed was subject and that with that knowledge Hartman helped tell the bank what to put in the agreement. (R. 215, 227).

A party who expressly excludes or reserves from a conveyance his entire oil, gas and mineral interest, albeit in reality he owns less than what he believes, should be deemed to have retained that portion which he in fact owns. Any contrary result would be patently unreasonable and arbitrary.

Appellants assert there are three possible interpretations from the deed and that their interpretation is the only reasonable one when the intent of the grantees (Hartmans) is considered. Appellants attempt to completely ignore their own knowledge of

the prior 50% conveyance and that the deed was expressly made subject to that prior interest. With that knowledge Hartmans helped the bank draft the deed.

Appellants claim that the 75% reservation was merely intended by the grantors to reserve the previously conveyed 50% and only 25% of the remaining 50%, thereby conveying to Hartmans 25%. In reliance on such intention of the parties, Hartmans say they subsequently conveyed the property to Lyard McConkie "reserving 25% in the grantors". Hartmans do not tell us whether the intent of the parties to the subsequent conveyance was the same as the intent Appellants claim under the Potter conveyance. Did Hartmans in their subsequent conveyance intend to reserve the 25% of the oil, gas and mineral rights previously reserved by Potters? If not, did Hartmans intend to sell McConkie 75% of the mineral rights which they did not own? Did Hartmans intend to breach their Warranty of Title? The obvious answers to these questions do not support what Hartmans claim the instant parties intended. This court has been previously made acquainted with the problems of Appellants in drafting and interpreting documents of sale. McConkie v. Hartman, 529 P.2d 801 (Utah 1974). Unfortunately this court was not then aware that Hartmans did not even own what they purported to reserve from their conveyance to the McConkies.

The only basis for support of the position espoused by Appellants is by application in this case of the Duhig doctrine stated in Duhig v. Peavey-Moore Lumber Co., 135 Tex. 503, 144 S.W.2d 878 (1940). However, Appellants have not argued the Dugig

doctrine in the lower court or in this court and this court should not seek to apply such a doctrine to this case. Furthermore, the intent and effect of the recording laws of Utah makes such a doctrine inappropriate in Utah. (Sections 57-1-6 and 57-3-2, U.C.A., 1953 as amended). Not only were the Hartmans advised by the county records that Potters had only 1/2 of the minerals, Hartmans admit actual knowledge. Therefore Appellants should have known that if Potters were to retain and reserve three-fourths of all the minerals belonging to the land, that Appellants would receive none. Also, the express language of the conveyance excludes therefrom the prior conveyance and Potters cannot be deemed to have breached any warranty of title under the construction given the deed by the lower court. Price v. Atlantic Refining Company, 79 N.M. 629, 447 P.2d 509 (1968) and Mitchel v. Brown, supra.

The lower court properly construed the deed as reserving in the grantors all of the oil, gas and mineral rights owned by the grantors (50%). Appellants should not be heard to exclaim that the reservation was intended to reserve the 50% interest owned by Bennett when Appellants knew that the grantors did not own that 50% and the same 50% was excluded from the deed by the deed being made subject to it.

CONCLUSION

This court should affirm the Summary Judgment of the lower court that title to 50% of the mineral rights is quieted in Respondent Potter since the reservation by Potters of 75% acted to

reserve to the grantors the balance of all the oil, gas and mineral rights owned by the Potters (50%) and no rights passed to Appellants.

Respectfully Submitted

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CERTIFICATE OF SERVICE

Served the foregoing by mailing two copies thereof, postage prepaid, to:

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this 28th day of December, 1978.